

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE	:	
	:	
v.	:	ID 0911008358
	:	
LESLIE D. SMALL,	:	
a/k/a KENNY WILLIAMS,	:	
	:	
Defendant.	:	

**MEMORANDUM OPINION**

*Upon Defendant's Motion in Limine to Invoke  
the Spousal Privilege. Denied.*

Submitted Date: August 17, 2010  
Decided Date: January 20, 2011

Peggy Marshall, Esquire and David Hume, IV, Esquire, Deputy Attorneys General,  
Department of Justice, Georgetown, Delaware, attorneys for the State.

E. Stephen Callaway, Esquire and John P. Daniello, Esquire, attorneys for the  
Defendant.

STOKES, J.

Pending before the Court is Defendant Leslie D. Small's motion in limine seeking to invoke the spousal privilege in this first degree capital murder case. For the reasons explained below, Defendant's motion is denied.

Defendant Small and Celeste Small ("Mrs. Small") were lawfully married at all times pertinent to this inquiry.

The dead body of June D. McCarson was found in her home in Lewes, Delaware, on November 12, 2009. On that same day, the Delaware State Police conducted two interviews with Mrs. Small at her home. She stated that Defendant had confessed to the murder during a car ride from their home in Milton to Milford. Defendant told her that he had tried unsuccessfully to strangle the victim. He then stabbed her in the neck with a pair of scissors and watched as she took her last breath.

On November 13, 2009, following his arrest, Defendant was interviewed by Detective William Porter of the Delaware State Police. Defendant stated that he had tried to choke the victim but was unable to do so because she struggled against him. He found scissors in the kitchen and stabbed the victim 7 or 8 times in the neck. He stated that he watched her die.

Defendant seeks to invoke the spousal privilege set forth in D.R.E. 504 to prevent Mrs. Small from testifying at Defendant's trial. The State argues that Defendant waived the privilege when he confessed to the murder to Det. Porter, pursuant to D.R.E. 510.

D.R.E 504(b) provides as follows:

*General rule of privilege.* Any party or witness in any proceeding has a

privilege to prevent his spouse from testifying as to any confidential communication between himself and his spouse.

It is uncontested that Defendant's statements to Mrs. Small were confidential at the time he made them.

D.R.E. 510 provides as follows:

Waiver of privilege by voluntary disclosure.

A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

Disclosure by a speaker-spouse to a third party of subject matter that parallels that of an earlier, otherwise privileged marital communication constitutes waiver.<sup>1</sup> As set forth above, Defendant's statements to his wife and to Det. Porter are notably similar. On both occasions, Defendant acknowledged that he tried to strangle the victim and that he ultimately stabbed her in the neck with scissors and saw her die. These are parallel accounts.

On Defendant's motion to suppress the full confession he made to Det. Porter, this Court found that Defendant's statement was voluntarily, knowingly and intelligently made. This finding meets the waiver requirement that the third-party disclosure be voluntarily made, pursuant to D.R.E. 510.

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<sup>1</sup>*Weedon v. State*, 647 A.2d 1078, 1081 (Del. 1994)(finding waiver of marital privilege where defendant disclosed to third parties the substance of statement made to wife that he "took care" of victim).

For these reasons, Defendant's motion to invoke the spousal privilege is **DENIED**.

**IT IS SO ORDERED.**

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Richard F. Stokes, Judge

Original to Prothonotary